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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 289

FIRST AMERICAN INSURANCE COMPANY,
Petitioner,

vs.

JOHN P. O'CONNOR
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The respondent, John P. O'Connor, files this brief in opposition to the petition for writ of certiorari heretofore filed in this Court.

The petitioner, First American Insurance Company, seeks review of a judgment and opinion of the United States Court of Appeals for the Fifth Circuit, affirming a judgment of the United States District Court, Southern District of Florida which held that an Illinois money judgment was entitled to full faith and credit and enforcement by the United States District Court for the Southern District of Florida.

I

OPINIONS BELOW

The opinion of the Court below is reported in 392 F^2 588 and attached to petitioner's brief as Appendix A.

II

QUESTION PRESENTED

Respondent disagrees with the question presented as framed in the petition (P.2). Rather the question here is simply: Whether a valid and enforceable Illinois judgment is entitled to full faith and credit and enforcement by the United States District Court for the Southern District of Florida.

III

STATEMENT

An Illinois judgment was entered on a jury verdict against petitioner's predecessor-successor, Public National Insurance Company, on June 19, 1964. It is conceded that the petitioner, First American Insurance Company, as successor to Public National Insurance Company, assumed the liabilities thereof, including its liability under its policy issued to respondent providing coverage for bodily injury and that the policy was in full force and effect on all dates material hereto. It was further conceded that respondent would be entitled to recover of petitioner if the District Court was obliged to give full faith and credit to the Illinois judgment.

Approximately one year after the entry of the judgment, the firm of Meyers and Mathias of Chicago, appearing on behalf of the petitioner, filed a Motion to Vacate this judgment in the Illinois Court, attacking its validity on numerous procedural grounds. After full hearing thereon—**at which time all parties to the action were represented**—this Motion was finally denied on September 8, 1965. **No appeal was taken from this Order.**

Enforcement of this final judgment was sought under the full faith and credit clause of the United States Constitution, in the United States District Court for the Southern District of Florida and a judgment in favor of the respondent was entered by this Court on Feb. 10, 1967.

IV

REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

There simply is no conflict of this decision (392 F^2 588) with other decisions of other Circuit Courts of Appeal on the same issue; nor is there any conflict with any prior decisions of this Court; nor was any grave or important question involving Federal law or procedure passed upon; nor was any departure from accepted standards of judicial procedure domonstrated; thus, no writ of certiorari should issue here. (See Rules of United States Supreme Court, Rule 19). All that was involved in the Fifth Circuit was a review of a routine application of the full faith and credit clause in the enforcement of a simple foreign money judgment and the Court upholding the action of the District Judge. Thus, there is no reason at all for this Court to take jurisdiction of the matter.

Petitioner relies on the case of **Windsor vs. McVeigh,** 93 U.S. 274, 23 L. Ed. 914 (1876) to establish conflict jurisdiction. This case of Civil War vintage was an instance of outright refusal of a Court to accept a general appearance on behalf of a defendant to an eminent domain proceeding as submitting the defendant to the jurisdiction of the Court. The general appearance was accepted in the Illinois proceedings. **McVeigh** was a spectacle of a Court rendering judgment after it expressly divested itself of jurisdiction. The Court in Illinois never divested itself of jurisdiction. **McVeigh** saw the Court accept the contention of government counsel that the defendant be precluded from participation in the suit because he was a Confederate sympathizer. In the instant case, Court remained open for any and all efforts by the insured or the insuror to make a defense. In the oft repeated words of the Court, there was more than a full and fair opportunity to litigate, and that is in such sharp contrast to the situation presented via the citation to **Windsor vs. McVeigh** that respondent must insist on its total inapplicability to this cause.

Petitioner further asserts that the Florida Courts would not accord this judgment full faith and credit and enforcement. This is not true. In an almost identical factual situation in the case of **Haas vs. Haas,** 59 So 2d 640, wherein a New York judgment was sought to be enforced in Florida, and the defense of lack of jurisdictional due process interposed, the Supreme Court of Florida said, P. 642:

"... And in the second place, by filing in the New York Court his Motion to Vacate and set aside the 1948 decree the respondent must be held to have submitted to the New York Court the question of the validity of such decree, and its order denying such motion is conclusive on this question in this Court. While this Court is not required to recognize the judgment of another state where the judgment was rendered by a court without jurisdiction, ... this rule is subject to the limitation that if the Court of the state which rendered the judgment has expressly litigated the jurisdictional questions ... that determination becomes res judicata on those points and is itself protected by the full faith and credit of the Constitution of the United States. The jurisdictional ... question cannot be re-litigated a second time in another state. (Cases cited)

There is no reason to grant the writ of certiorari in this routine case of enforcement of a foreign money judgment. No important Federal question was decided, and no special reason for granting the writ has been shown and the case presents no substantial or important question to be settled by this Court. No new principle of law has been pronounced or no departure from established principles of law or procedure has been shown.

V

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Brief in Opposition to Petition for Writ of Certiorari was mailed to Joe N. Unger, Esq., 1525 Alfred I. duPont Building, Miami, Florida and Alvin N. Weinstein, Esq., 311 Biscayne Building, Miami, Florida, Counsel for Petitioner, this_____day of_____, 1968.

_____

J. B. Spence